

**ION UNDER 28 U.S.C. § TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

UNITED STATES DISTRICT COURT	NORTHERN DISTRICT OF TEXAS
	Case No: 3:13-cr-00446-P-1
Place of Confinement: FCI POLLOCK	Prisoner No: 21770-078

UNITED STATES OF AMERICA      v.      WAYNE JOSEPH SWEENEY  
Movant (include name under which convicted)

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED

**-MOTION-**

(a) Name and location of court which entered the judgment of conviction you are challenging: UNITED STATESN DISTRICT COURT, NORTHERN DISTRICT OF TEXAS  
(DALLAS DIVISION)

OCT 15 2015

Deputy

(b) Criminal docket or case number (if you know): 3:13-cr-00446-P1

2 (a) Date of judgment of conviction (if you know): DECEMBER 10, 2014

(b) Date of sentencing: DECEMBER 10, 2014

3 Length of sentence: 108 MONTHS IMPRISONMENT

4 Nature of crime (all counts): CONSPIRACY TO POSSESS W/I TO DISTRIBUTE ANALOGUE SUBSTANCE

5 (a) What was your plea? (Check one) (1) Not guilty \_\_\_\_ (2) Guilty X

(b) If you entered a guilty plea to one count of indictment, and a not guilty plea to another count of a indictment, what did you plead guilty to and what did you plead not guilty to? N/A

6. If you went to trial, what kind of trial did you have? Judge X Jury\_\_\_\_

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes \_\_\_\_ No X

8. Did you appeal form the judgment of conviction? Yes X No

9. If you did appeal, answer the following:

(a) Name of court: UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(b) Docket or case number (if you know) 14-11368

(c) Result: DISMISSED

(d) Date of Result (if you know): JUNE 3, 2015

(e) Citation to the case (if you know): UKN.

(f) Grounds Raised: UNK

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes    No X

If "Yes," answer the following: N/A

(1) Docket or case number (if you know) N/A

(2) Results: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know) N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or Applications concerning this judgment of conviction in any court? Yes    No X

11. If your answer to question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

12. For this motion, state every ground, on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PLEASE SEE MOVANT'S MEMORANDUM OF LAW SUBMITTED SEPARATELY HEREWITH.

(b) Direct Appeal of Ground One: THESE ISSUES WERE NOT RAISED IN THE DIRECT APPEAL BECAUSE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS ARE NOT COGNIZABLE FOR DIRECT REVIEW.

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes    No X

(2) If you did not raise this issue in your direct appeal, explain why:  
ISSUES INVOLVING INEFFECTIVE ASSISTANCE OF COUNSEL ARE NOT COGNIZABLE FOR DIRECT APPELLATE REVIEW.

(c) Post-Conviction Proceedings: THIS IS THE FIRST AND ONLY § 2255 MOTION FILED IN THIS CASE.

(1) Did you raise this issue in any post-conviction motion, petition, or Application? Yes No X

(2) If your answer to Question (c) (1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:  
N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Results (attach a copy of the court's opinion or order if available):  
N/A

(3) Did you receive a hearing on your motion, petition, or application?  
Yes No X

(4) Did you appeal from the denial of your motion, petition, or application?  
Yes No X

(5) If you answer to Question (c)(4) is "Yes," state: N/A

(6) If your answer to Question (c)(4) is "Yes," state: Name and location  
Of the Court which entered the judgment. N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why  
you did not appeal or raise the issue: INEFFECTIVE ASSISTANCE OF  
COUNSEL CLAIMS ARE NOT COGNIZABLE FOR DIRECT APPEAL

GROUND TWO INEFFECTIVE ASSISTANCE OF COUNSEL. NO FACTUAL BASIS FOR  
GUILTY PLEA.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim): Please see MOVANT'S MEMORANDUM OF LAW  
SUBMITTED SEPARATELY HEREWITH.

(b) Direct Appeal of Ground Two:

- (1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X
- (2) If you did not raise this issue in your direct appeal, explain why:  
INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM NOT COGNIZABLE.

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or Application? Yes No X

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of Motion or Petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

- (3) Did you receive a hearing on your motion, petition, or application?  
Yes No X
- (4) Did you appeal from the denial of your motion, petition, or application?  
Yes No X
- (5) If your answer to question to (c)(4) is "Yes," did you raise the issue in the appeal? Yes No X
- (6) If your answer to question (c)(4) is "Yes," state: Name and location of the court where here the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A
- (7) If your answer to Question (c)(4) or (c)(5) is "No," explain why you did not raise this issue: N/A

**GROUND THREE: MOVANT ADVANCES ONLY TWO GROUNDS AS SET OUT ABOVE**

(a) Supporting facts (Do not argue or cite law just state the specific facts that support your claim.): N/A

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X

(2) If you did not raise this issue in your direct appeal, explain why:  
I only have two grounds for relief, and there is no ground three.

(c) Post Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? Yes No X

(2) If your answer to Question (c)(1) is "Yes," state:

Type of Motion or Petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?  
Yes No X

(4) Did you appeal from the denial of your motion, petition, or application?  
Yes No X

(5) If you answer to Question (c)(4) is "Yes," did you raise the issue in the Appeal? Yes No X

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or (c)(5) is "No," explain why did not appeal or raise this issue: N/A

**GROUND FOUR: N/A**

**(a) Supporting facts (Do not argue or cite law. Just state the specific facts that Support your claim: N/A**

**(b) Direct Appeal of Ground Four:**

**(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No X**

**(2) If you did not raise this issue in your direct appeal explain why: N/A**

**(c) Post Conviction Proceedings:**

**(1) Did you raise this issue in any post-conviction, motion, petition, or Application? Yes No X**

**(2) If your answer to Question (c)(1) is "Yes," state:**

**Type of Motion or Petition: N/A**

**Name and location of the court where the motion or petition was filed:  
N/A**

**Docket or case number (if you know): N/A**

**Date of the court's decision: N/A**

**(Attach a copy of the court's opinion or order, if available: N/A**

**(3) Did you receive a hearing on your motion, petition, or application?  
Yes No X**

**(4) Did you appeal from the denial of your motion, petition, or application?  
Yes No X**

**(5) If your answer to Question (c)(4) is "Yes," state:**

**Name and location of the court where the appeal was filed: N/A**

**Docket or case number (if you know): N/A**

**Date of the court's decision: N/A**

**Result (attach a copy of the court's opinion or order, if available): N/A**

**(6) If your answer to Question (c)(4) or (c)(5) is "No," explain why you did not appeal or raise this issue: NO**

**None of the issues raised herein have been previously raised in any court because of ineffective assistance of counsel.**

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NONE OF THE GROUNDS PRESENTED HERE HAVE PREVIOUSLY BEEN PRESENTED TO ANY COURT BECAUSE OF THE INEFFECTIVE ASSISTANCE OF SENTENCING AND APPELLATE COUNSEL'.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the Conviction you are challenging? Yes No X

If "Yes, "state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the process you are challenging:

(a) At the preliminary hearing: PHILLIP A. LINDER, 3500 MAPLE AVE., DALLAS, TX 75219

(b) At the arraignment and plea: CARL RANDALL DAY & LARRY FINSTROM,

(c) At the trial: N/A

(d) At the sentencing: SAME AS (b)

(e) On appeal: LYDIA M. BRANDT

(f) In any post-conviction proceeding: Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No X

17. Do you have any future sentence to serve after you complete the sentence for judgment that you are challenging? Yes No X

(a) If so, give name and location of court that imposed the other sentence you will serve in the future

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No X

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion. **THIS MOTION IS BEING SUBMITTED WITHIN ONE-YEAR LIMITATION PERIOD PROVIDED BY THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT.**

**CONCLUSION**

**WHEREFORE, Movant requests that the Court grant the following relief: Vacate, Set Aside, or Correct Sentence, or any other relief to which Movant may be entitled:**



Movant

Dated: October 5, 2015

Wayne Joseph Sweeney  
Reg. No. 21770-078  
Federal Correctional Institution  
Post Office Box 4050  
Pollock, Louisiana 71467

United States District Court  
Northern District of Texas  
1100 Commerce Street  
Dallas, Texas 75242-1003

Expected Delivery Day: 10/07/15

USPS TRACKING NUMBER



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Signatures

We hope you understand. We send you off.  
We could only think of ways out because there  
wasn't in order that gave a real conclusion's way  
to fill it up.

Please accept our apologies.

UNITED STATES POSTAL SERVICE